

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

PLU INVESTMENTS, LLC, and Arizona limited  
liability company,

Plaintiff,

v.

INTRASPECT GROUP, INC., a Nevada  
Corporation; National Housing Solutions, LLC, a  
Nevada limited liability company; TODD  
BUCKNER and JANE DOE BUCKNER,  
husband and wife,

Defendants

No. 2:10-CV-00626-RSL

MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF DEFENDANT  
MARINA ANDRUSHCHAK'S  
MOTION FOR RELIEF FROM  
DEADLINE AND  
ATTORNEY'S FEES

Note on Motion Calendar:  
March 4, 2011

I. STATEMENT OF FACTS

Defendant MARINA ANDRUSHCHAK ("MARINA") was sued by Plaintiff  
PLU INVESTMENTS, LLC under the Guaranty signed by her former husband  
Defendant TODD BUCKNER ("TODD"). Plaintiff's Complaint. Counsel for PLU  
was advised via MARINA's Motion to Set Aside Default, her subsequent Answer to

MEMO OF P&A IN SUPPORT OF MARINA  
ANDRUSHCHAK'S MOTION FOR RELIEF FROM DEADLINE  
AND ATTORNEY'S FEES - 1  
2:10-CV-00626-RSL

1 Complaint and telephone conversations with counsel for PLU that no marital  
2 community has existed at all relevant time, and was requested by counsel for  
3 MARINA that MARINA be released from the action. Litchev Decl. ¶3 MARINA's  
4 Motion to Set Aside Default filed as early as on or about June 29, 2010, contained an  
5 attached copy of the Court Judgment finding that the parties were separated on  
6 September 2, 2007 and the separation contract was executed on December 15, 2009.  
7 Litchev Decl. ¶3. Subsequent affidavits by MARINA and TODD were filed  
8 confirming that no marital community existed. Litchev Decl. ¶3.

9 Despite of the above, Counsel for PLU refused to release MARINA from the  
10 lawsuit, moreover, refused to stipulate to setting aside her default caused by lack of  
11 service of process and failed to do timely discovery, causing delays in adjudication of  
12 the Motion for Summary Judgment filed by MARINA. Litchev Decl. ¶4. In the end,  
13 on January 14, 2011, Counsel for PLU deposed MARINA for less than one and a half  
14 hours and did not contest her Motion for Summary Judgment. Litchev Decl. ¶5

15 On January 26, 2011, the Court entered the judgment for MARINA and against  
16 PLU. Court Record. On January 26, 2011, Counsel for MARINA e-mailed counsel for  
17 PLU requesting payment of the attorney's fees. Litchev Decl. ¶6. On January 27,  
18 2011, counsel for PLU requested information regarding attorney's fees attributable to  
19 MARINA. Litchev Decl. ¶7. On February 1, 2011, Counsel for MARINA e-mailed the  
20 spreadsheet to counsel for PLU. Litchev Decl. ¶8. On February 2, 2010, counsel for  
21 PLU responded that he would contact PLU regarding the same, but never responded.  
22 Litchev Decl. ¶9 On February 14, 2010, Counsel for MARINA followed up with  
counsel for PLU but has not heard back. Litchev Decl. ¶10.

## II. LEGAL ARGUMENT

### A. MARINA MOVES THE COURT FOR RELIEF FROM DEADLINE TO FILE THE MOTION FOR ATTORNEY'S FEES UNDER FRCP 60

1 Fed. Rule of Civ. Proc 54 (d)2(B) states that the motion for attorney's fees  
2 must be filed 14 days after the entry of judgment "unless a statute or a court order  
3 provides otherwise." MARINA respectfully requests that she be relieved from the  
4 deadline due to the above reasons and the court hears her motion for attorney's fees.

5 Fed Rule of Civ Proc. 60 states that on a

6 "motion and just terms, the court may relieve a party or its legal representative  
7 from a final judgment, order, or proceeding for the following reasons:

8 (1) mistake, inadvertence, surprise, or excusable neglect;

9 (2) newly discovered evidence that, with reasonable diligence, could not have  
10 been discovered in time to move for a new trial under Rule 59(b);

11 (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation,  
12 or misconduct by an opposing party;

13 (4) the judgment is void;

14 (5) the judgment has been satisfied, released, or discharged; it is based on an  
15 earlier judgment that has been reversed or vacated; or applying it prospectively  
16 is no longer equitable; or

17 (6) any other reason that justifies relief."

18 Here, counsel for plaintiff and MARINA were engaged in negotiations and  
19 settlement of the attorney's fees issue. Although counsel for Plaintiff was careful not  
20 to make any promises in writing, his conduct led counsel for MARINA to believe that  
21 the issue would be resolved absent the necessity to bring a motion for fees.  
22 Declaration of Litchev.

However, counsel for MARINA was mistaken in that counsel for PLU  
apparently had no intent to negotiate the settlement of the fee issue, as he failed to get  
back to counsel for MARINA with any answer. Neither affirmative nor negative  
answer was returned to counsel for MARINA. MARINA should not be penalized for  
her counsel's above mistake.

Furthermore, other facts of this litigation warrant relief. The factual  
contentions of PLU against MARINA did not have any evidentiary support. However,  
PLU refused to stipulate to set aside MARINA's default and objected to MARINA's

1 Motion for Summary Judgment, even after being apprised of the facts related to the  
2 lack of marital community and of MARINA's liability and failed to dismiss her from  
3 the action, causing the fees to escalate and amount to \$5,180.

4 MARINA brings this motion within 30 days from the entry of judgment,  
5 promptly upon realizing that Plaintiff is not interested in settling this matter. There is  
6 no prejudice to the opposing party because Plaintiff was on notice that the attorney's  
fees were sought by MARINA.

7 Based on the above, MARINA respectfully requests that she be relieved from  
8 the deadline due to the above reasons and the court hear her motion for attorney's fees.

9 B. MARINA IS ENTITLED TO AN AWARD OF ATTORNEY'S  
10 FEES AS PREVAILING PARTY UNDER THE MUTUALITY OF  
11 REMEDIES ADOPTED IN WASHINGTON

12 In a diversity cases, availability of attorney's fees award is determined by state  
13 law. Kern Oil E Refining Co v. Tenneco Oil Co., 792 F2d 1380, 1388 (1986).

14 In Washington, availability of attorney's fees is governed by RCW 4.84.330,  
15 which states:

16 "In any action on a contract or lease entered into after  
17 September 21, 1977, where such contract or lease specifically  
18 provides that attorney's fees and costs, which are incurred to  
enforce the provisions of such contract or lease, shall be  
awarded to one of the parties, the prevailing party, whether he is  
the party specified in the contract or lease or not, shall be  
entitled to reasonable attorney's fees in addition to costs and  
necessary disbursements." RCW 4.84.330.

19 Plaintiff PLU recovered attorney's fees from Defendant TODD BUCKNER  
20 under the Guaranty providing for recovery of reasonable attorney's fees by the  
21 prevailing party. Because PLU was entitled to an award of fees, MARINA is also  
22

1 entitled to such award as prevailing party against PLU, regardless of the fact that she  
2 was not specified in the Guaranty.

3  
4 III. CONCLUSION

5 Based on the foregoing, MARINA ANDRUSHCHAK respectfully requests  
6 that she be relieved from the deadline under Rule 60 (1), (3), (6) and awarded  
7 attorney's fees in this matter as prevailing party against Plaintiff under RCW 4.84.330.

8 Dated: February 23, 2011

9 By: \_\_\_\_\_s/Natalia Litchev\_\_\_\_\_  
10 Natalia Litchev  
11 5400 Carillon Point  
12 Building 5000, 4<sup>th</sup> Floor  
Kirkland, WA 98033  
Tel. 425-999-9061

13 Certificate of Service through Electronic Case Filing

14 I, Natalia Litchev of Litchev Law Firm, certify that on February 23, 2011 I filed and  
15 served on Plaintiff the following documents via ECF System:

16 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
17 DEFENDANT MARINA ANDRUSHCHAK'S MOTION FOR RELIEF FROM  
DEADLINE AND ATTORNEY'S FEES

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